

REFERENCE TITLE: **contractors; regulations**

State of Arizona
House of Representatives
Forty-eighth Legislature
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2008

HB 2030

Introduced by
Representative Konopnicki

AN ACT

AMENDING SECTIONS 20-1095.02, 32-1101, 32-1121, 32-1122, 32-1132, 32-1152, 32-1154 AND 32-1165, ARIZONA REVISED STATUTES; RELATING TO CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1095.02, Arizona Revised Statutes, is amended to
3 read:

4 20-1095.02. Exemptions: definition

5 A. ~~The provisions of~~ This article, except for section 20-1095.09, ~~do~~
6 DOES not apply to the following:

7 1. Warranties issued by manufacturers or sellers.

8 2. Service contract programs if a motor vehicle manufacturer has
9 financial responsibility for performance.

10 3. Warranties and service contracts issued by a corporation other than
11 a manufacturer or seller in connection with consumer products that are
12 distributed by the corporation if the issuing corporation:

13 (a) Is an affiliate of a consumer products manufacturer.

14 (b) By March 1 of each year submits to the director an independently
15 audited financial statement in which at least one officer of the issuing
16 corporation attests and a certified public accountant certifies that the
17 issuing corporation has and maintains a net worth in excess of one hundred
18 million dollars. Any information, documents and copies that are obtained by
19 or disclosed to the director or any other person pursuant to this subdivision
20 are not available for public inspection, except that the director may use
21 this information in any proceeding relating to this article.

22 4. A service company ~~which~~ THAT issues a service contract to persons
23 other than a consumer.

24 5. A service company ~~which~~ THAT is in the business of selling or
25 servicing any one of the following:

26 (a) Appliances or electronic equipment, or both.

27 (b) Residential heating, cooling or air conditioning systems.

28 (c) Mechanical equipment, other than motor vehicles or their
29 components.

30 6. Any person licensed pursuant to title 32, chapter 10, or not
31 required to be licensed because exempt pursuant to section 32-1121,
32 subsection A, paragraph ~~13~~ 12.

33 B. The director may employ independent examiners pursuant to section
34 20-156 to review and analyze the financial statements that are submitted
35 pursuant to subsection A, paragraph 3 of this section.

36 C. A motor vehicle dealer who is licensed under title 28, chapter 10,
37 who sells a service contract program approved by the director pursuant to
38 section 20-1095.06 and who notifies the director pursuant to section
39 20-1095.07 shall be exempt from the remainder of the requirements of this
40 article.

41 D. For the purposes of this section, "affiliate" means a corporation
42 that is owned or controlled by or is under common control with a
43 manufacturer.

44 Sec. 2. Section 32-1101, Arizona Revised Statutes, is amended to read:

45 32-1101. Definitions

1 A. In this chapter, unless the context otherwise requires:

2 1. "Advertisement" means any written or oral publication,
3 dissemination, solicitation or circulation ~~which~~ THAT is intended to directly
4 or indirectly induce any person to enter into an agreement for contracting
5 services with a contractor, including business cards and telephone directory
6 display advertisements.

7 2. "Commercial contractor" is synonymous with the terms "commercial
8 builder", "industrial builder" and "public works builder" and means any
9 person, firm, partnership, corporation, association or other organization, or
10 any combination, that, for compensation, undertakes to or offers to undertake
11 to, purports to have the capacity to undertake to, submits a bid to, does
12 himself or by or through others, or directly or indirectly supervises others,
13 except within residential property lines, to:

14 (a) Construct, alter, repair, add to, subtract from, improve, move,
15 wreck or demolish any building, highway, road, railroad, excavation or other
16 structure, project, development or improvement, or to do any part thereof,
17 including the erection of scaffolding or any other structure or work in
18 connection with the construction.

19 (b) Connect such structure or improvements to utility service lines
20 and metering devices and the sewer line.

21 (c) Provide mechanical or structural service for any such structure or
22 improvements.

23 3. "COMPENSATION" MEANS PAYMENT IN MONIES, GOODS OR SERVICES FOR WORK
24 PERFORMED AND INCLUDES RENTAL OR SALES RECEIPTS OR ANTICIPATED RENTAL OR
25 SALES RECEIPTS.

26 ~~3-~~ 4. "Contractor" is synonymous with the term "builder" and means
27 any person, firm, partnership, corporation, association or other
28 organization, or ~~a~~ ANY combination of any of them, that, for compensation,
29 undertakes to or offers to undertake to, purports to have the capacity to
30 undertake to, submits a bid or responds to a request for qualification or a
31 request for proposals for construction services to, does himself or by or
32 through others, or directly or indirectly supervises others to:

33 (a) Construct, alter, repair, add to, subtract from, improve, move,
34 wreck or demolish any building, highway, road, railroad, excavation or other
35 structure, project, development or improvement, or to do any part thereof,
36 including the erection of scaffolding or any other structure or work in
37 connection with the construction.

38 (b) Connect such structure or improvements to utility service lines
39 and metering devices and the sewer line.

40 (c) Provide mechanical or structural service for any such structure or
41 improvements.

42 ~~4-~~ 5. "Dual licensed contractor" is synonymous with the term
43 "commercial and residential builder" and means any person, firm, partnership,
44 corporation, association or other organization, or any combination, that, FOR
45 COMPENSATION, undertakes to or offers to undertake to, purports to have the

1 capacity to undertake to, submits a bid to, does himself or by or through
2 others, or directly or indirectly supervises others under a single license on
3 commercial or residential property to:

4 (a) Construct, alter, repair, add to, subtract from, improve, move,
5 wreck or demolish any building, excavation or other structure
6 or improvement, including any appurtenances, or to do any part thereof.

7 (b) Connect such structure or improvements to utility service lines
8 and metering devices and the sewer line.

9 (c) Provide mechanical or structural service for any such structure or
10 improvements.

11 ~~5-~~ 6. "Person" means an applicant, an individual, a member of a
12 limited liability company, a qualifying party, any partner of a partnership
13 or limited liability partnership or any officer, director, qualifying party,
14 trustee of a trust, beneficiary of a trust or owner of at least twenty-five
15 per cent of the stock or beneficial interest of a corporation.

16 ~~6-~~ 7. "Registrar" means the registrar of contractors.

17 ~~7-~~ 8. "Residential contractor" is synonymous with the term
18 "residential builder" and means any person, firm, partnership, corporation,
19 association or other organization, or ~~a~~ ANY combination of any of them,
20 that, **FOR COMPENSATION**, undertakes to or offers to undertake to, purports to
21 have the capacity to undertake to, submits a bid to, or does himself or by or
22 through others, within residential property lines:

23 (a) Construct, alter, repair, add to, subtract from, improve, move,
24 wreck or demolish any residential structure, such as houses, townhouses,
25 condominiums or cooperative units. Residential structures also include
26 apartment complexes of four units or less and any appurtenances on or within
27 residential property lines.

28 (b) Connect such residential structure to utility service lines,
29 metering devices or sewer lines.

30 (c) Provide mechanical or structural service for any such residential
31 structure.

32 B. "Contractor" includes subcontractors, specialty contractors, floor
33 covering contractors, landscape contractors, other than gardeners, and
34 consultants representing themselves as having the ability to supervise or
35 manage a construction project for the benefit of the property owner including
36 the hiring and firing of specialty contractors, the scheduling of work on the
37 project and the selection and purchasing of construction material.

38 C. For the purposes of this chapter, ~~"residential contractor"~~ does
39 not include an owner making improvements pursuant to section 32-1121,
40 subsection A, paragraph ~~5-~~ 4.

41 D. Only contractors as defined in this section are licensed and
42 regulated by this chapter.

43 Sec. 3. Section 32-1121, Arizona Revised Statutes, is amended to read:
44 32-1121. Persons not required to be licensed; penalties

45 A. This chapter shall not be construed to apply to:

1 1. An authorized representative of the United States government, this
2 state or any county, incorporated city or town, reclamation district,
3 irrigation district or other municipality or political subdivision of this
4 state.

5 ~~2. Trustees of an express trust that is not formed for the purpose of~~
6 ~~conducting business as a contractor or officers of a court, if they are~~
7 ~~acting within the terms of their trust or office.~~

8 ~~3.~~ 2. Public utilities operating under regulation of the corporation
9 commission or construction, repair or operation incidental to discovering or
10 producing petroleum or gas, or the drilling, testing, abandoning or other
11 operation of a petroleum or gas well, if performed by an owner or lessee.

12 ~~4.~~ 3. Any materialman, manufacturer or retailer ~~furnishing~~ WHO
13 FURNISHES finished products, materials or articles of merchandise AND who
14 ~~does not install or attach such items or installs or~~ attaches such items if
15 the total value of the sales contract or transaction involving such items and
16 the cost of the installation or attachment of such items to a structure does
17 not exceed one thousand dollars, including labor, materials and all other
18 items, but excluding any electrical fixture or appliance that was designed by
19 the manufacturer, that is unaltered, unchanged or unmodified by any person,
20 that can be plugged into a common household electrical outlet utilizing a two
21 pronged or three pronged electrical connector and that does not use any other
22 form of energy, including natural gas, propane or other petroleum or gaseous
23 fuel, to operate or is attached by a nail, screw or other fastening device to
24 the frame or foundation of any residential structure. The materialman,
25 manufacturer or retailer shall inform the purchaser that the installation may
26 also be performed by a licensed contractor whose name and address the
27 purchaser may request.

28 ~~5.~~ 4. Owners of property who improve such property or who build or
29 improve structures or appurtenances on such property and who do the work
30 themselves, with their own employees or with duly licensed contractors, if
31 the structure, group of structures or appurtenances, including the
32 improvements thereto, are intended for occupancy solely by the owner and are
33 not intended for occupancy by members of the public as the owner's employees
34 or business visitors and the structures or appurtenances are not intended for
35 sale or for rent. In all actions brought under this chapter, proof of the
36 sale or rent or the offering for sale or rent of any such structure by the
37 owner-builder within one year after completion or issuance of a certificate
38 of occupancy is prima facie evidence that such project was undertaken for the
39 purpose of sale or rent. For the purposes of this paragraph, "sale" or
40 "rent" includes any arrangement by which the owner receives compensation in
41 money, provisions, chattels or labor from the occupancy or the transfer of
42 the property or the structures on the property.

43 ~~6.~~ 5. Owners of property who are acting as developers and who build
44 structures or appurtenances to structures on their property for the purpose
45 of sale or rent and who contract for such a project with a general contractor

1 licensed pursuant to this chapter and owners of property who are acting as
2 developers, who improve structures or appurtenances to structures on their
3 property for the purpose of sale or rent and who contract for such a project
4 with a general contractor or specialty contractors licensed pursuant to this
5 chapter. To qualify for the exemption under this paragraph, the licensed
6 contractors' names and license numbers shall be included in all sales
7 documents.

8 ~~7.~~ 6. Architects or engineers who are engaging in their professional
9 practice as defined in chapter 1 of this title and who hire or offer to hire
10 the services of a contractor for preconstruction activities relating to
11 investigation and discovery including:

- 12 (a) Subsurface utility location and designation services.
- 13 (b) Potholing.
- 14 (c) Drilling for any of the following:
 - 15 (i) Soil samples.
 - 16 (ii) Rock samples.
 - 17 (iii) Pavement samples.
- 18 (d) Locating existing features of a building or structure including
19 existing electrical, mechanical, plumbing and structural members.

20 ~~8.~~ 7. A person licensed, certified or registered pursuant to chapter
21 22 of this title or a person working under the direct supervision of a person
22 certified or qualified pursuant to chapter 22 of this title to the extent the
23 person is engaged in structural pest control.

24 ~~9.~~ 8. The sale or installation of finished products, materials or
25 articles of merchandise ~~which~~ THAT are not fabricated into and do not become
26 a permanent fixed part of the structure. This exemption does not apply if a
27 local building permit is required, if the total price of the finished
28 product, material or article of merchandise, including labor but excluding
29 any electrical fixture or appliance that was designed by the manufacturer,
30 that is unaltered, unchanged or unmodified by any person, that can be plugged
31 into a common household electrical outlet utilizing a two pronged or three
32 pronged electrical connector and that does not use any other form of energy,
33 including natural gas, propane or other petroleum or gaseous fuel, to operate
34 or is attached by a nail, screw or other fastening device to the frame or
35 foundation of any residential structure, is more than one thousand dollars or
36 if the removal of the finished product, material or article of merchandise
37 causes damage to the structure or renders the structure unfit for its
38 intended use.

39 ~~10.~~ 9. Employees of the owners of condominiums, townhouses,
40 cooperative units or apartment complexes of four units or less or the owners'
41 management agent or employees of the management agent repairing or
42 maintaining structures owned by them.

43 ~~11.~~ 10. Any person who engages in the activities regulated by this
44 chapter, as an employee of an exempt property owner or as an employee with
45 wages as the person's sole compensation.

1 ~~12.~~ 11. A surety company or companies ~~which~~ THAT are authorized to
2 transact business in this state and ~~which~~ THAT undertake to complete a
3 contract on which they issued a performance or completion bond, provided all
4 construction work is performed by duly licensed contractors.

5 ~~13.~~ 12. Insurance companies ~~which~~ THAT are authorized to transact
6 business in this state and ~~which~~ THAT undertake to perform repairs resulting
7 from casualty losses pursuant to the provisions of a policy, provided all
8 construction work is performed by duly licensed contractors.

9 ~~14.~~ 13. Any person other than a licensed contractor engaging in any
10 work or operation on one undertaking or project by one or more contracts, for
11 which the aggregate contract price, including labor, materials and all other
12 items, but excluding any electrical fixture or appliance that was designed by
13 the manufacturer, that is unaltered, unchanged or unmodified by any person,
14 that can be plugged into a common household electrical outlet utilizing a two
15 pronged or three pronged electrical connector and that does not use any other
16 form of energy, including natural gas, propane or other petroleum or gaseous
17 fuel, to operate or is attached by a nail, screw or other fastening device to
18 the frame or foundation of any residential structure, is less than one
19 thousand dollars. The work or operations ~~which~~ THAT are exempt under this
20 paragraph shall be of a casual or minor nature. This exemption does not
21 apply:

22 (a) In any case in which the performance of the work requires a local
23 building permit.

24 (b) In any case in which the work or construction is only a part of a
25 larger or major operation, whether undertaken by the same or a different
26 contractor, or in which a division of the operation is made in contracts of
27 amounts less than one thousand dollars, excluding any electrical fixture or
28 appliance that was designed by the manufacturer, that is unaltered, unchanged
29 or unmodified by any person, that can be plugged into a common household
30 electrical outlet utilizing a two pronged or three pronged electrical
31 connector and that does not use any other form of energy, including natural
32 gas, propane or other petroleum or gaseous fuel, to operate or is attached by
33 a nail, screw or other fastening device to the frame or foundation of any
34 residential structure, for the purpose of evasion of this chapter or
35 otherwise.

36 (c) To a person who utilizes any form of advertising to the public in
37 which the person's unlicensed status is not disclosed by including the words
38 "not a licensed contractor" in the advertisement.

39 ~~15.~~ 14. A person who is licensed, certified or registered pursuant to
40 title 41, chapter 16 and who is not otherwise required to be licensed under
41 this chapter or an employee of such person.

42 ~~16.~~ 15. A person who functions as a gardener by performing lawn,
43 garden, shrub and tree maintenance.

44 B. A person who is licensed to perform work in a particular trade
45 pursuant to this chapter shall not be required to obtain and maintain a

1 separate license for mechanical or structural service work performed within
2 the scope of such trade by such person.

3 C. Any person who does not have an exemption from licensure pursuant
4 to subsection A, paragraph ~~14~~ 13, subdivision (c) of this section is subject
5 to prosecution for a violation of section 44-1522. The attorney general may
6 investigate the act or practice and take appropriate action pursuant to title
7 44, chapter 10, article 7.

8 Sec. 4. Section 32-1122, Arizona Revised Statutes, is amended to read:
9 32-1122. Qualifications for license

10 A. A contractor's license shall be issued only by act of the registrar
11 of contractors. The registrar shall:

12 1. Classify and qualify applicants for a license.

13 2. If necessary, change the license classification of a licensee in
14 the case of a title reclassification, with or without a bond rider for the
15 purpose of continuing liability on the bond.

16 3. Conduct investigations the registrar deems necessary.

17 4. Establish written examinations if deemed necessary to protect the
18 health and safety of the public.

19 B. To obtain or renew a license under this chapter, the applicant
20 shall:

21 1. Submit to the registrar of contractors a verified application on
22 forms that are prescribed by the registrar of contractors and that contain
23 the following information and shall advise the registrar of any change in the
24 information within thirty days:

25 (a) A designation of the classification of license that is sought by
26 the applicant.

27 (b) If the applicant is an individual, the applicant's name and
28 address.

29 (c) If the applicant is a partnership, the names and addresses of all
30 partners with a designation of any limited partners.

31 (d) If the applicant is a corporation, an association or any other
32 organization, the names and addresses of the president, vice-president, if
33 any, secretary and treasurer or the names and addresses of the functional
34 equivalent of these officers, the directors and the owners of twenty-five per
35 cent or more of the stock or beneficial interest.

36 (e) The name and address of the qualifying party.

37 (f) If the applicant is a corporation, evidence that the corporation
38 is in good standing with the corporation commission.

39 (g) The address or location of the applicant's place of business and
40 the mailing address if it is different from the applicant's place of
41 business.

42 (h) The applicant's current privilege license number issued pursuant
43 to section 42-5005.

44 (i) Proof that the applicant has complied with the statutes or rules
45 governing workers' compensation insurance.

1 2. Submit the appropriate bond and fee required under this chapter.
 2 C. To obtain a contractor's license under this chapter other than a
 3 residential contractor's license, the applicant shall submit a detailed
 4 statement of current financial condition containing information required by
 5 the registrar of contractors on a form furnished by or acceptable to the
 6 registrar of contractors. Notwithstanding any other law, a swimming pool
 7 contractor shall also submit a detailed statement of current financial
 8 condition as required by this subsection.

9 D. To obtain, ~~HOLD~~ or renew a license under this chapter, each person
 10 shall be of good character and reputation. Lack of good character and
 11 reputation may be established by showing that a person has engaged in
 12 contracting without a license or committed any act that, if committed or done
 13 by any licensed contractor, would be grounds for suspension or revocation of
 14 a contractor's license or by showing that the person was named on a
 15 contractor's license that was suspended or revoked in another state.

16 E. To obtain a license under this chapter, a person shall not have had
 17 a license refused or revoked, within one year before the person's
 18 application, or shall not have engaged in the contracting business, nor shall
 19 the person have submitted a bid without first having been licensed within one
 20 year before the person's application, nor shall a person act as a contractor
 21 between the filing of the application and actual issuance of the
 22 license. The registrar may find any of those actions or circumstances to be
 23 excusable if there was reasonable doubt as to the need for licensure or the
 24 actions of the applicant did not result in an unremedied hardship or danger
 25 or loss to the public. A person who has been convicted of contracting
 26 without a license is not eligible to obtain a license under this chapter for
 27 one year after the date of the last conviction.

28 F. Before a license is issued, the qualifying party shall:

29 1. Have had a minimum of ~~four~~ ~~SIX~~ years' practical or management trade
 30 experience, at least ~~two~~ ~~THREE~~ of which must have been within the last ten
 31 years, dealing specifically with the type of construction, or its equivalent,
 32 for which the applicant is applying for a license. Technical training in an
 33 accredited college or university or in a manufacturer's accredited training
 34 program may be substituted for a portion of such experience, but in no case
 35 may credited technical training exceed two years of the required ~~four~~ ~~SIX~~
 36 years' experience. The registrar of contractors may reduce the ~~four~~ ~~SIX~~
 37 years' practical or management experience requirement if in the registrar's
 38 opinion it has been conclusively shown by custom and usage in the particular
 39 industry or craft involved that the ~~four~~ ~~SIX~~ year requirement is
 40 excessive. The registrar may waive the work experience documentation and
 41 verification or the examination requirement if the records reflect that the
 42 qualifying party is currently or has previously been a qualifying party for a
 43 licensee in this state in the same classification within the preceding five
 44 years.

1 2. Successfully show, by written examination taken not more than two
2 years before application, if required, qualification in the kind of work for
3 which the applicant proposes to contract, the applicant's general knowledge
4 of the building, safety, health and lien laws of the state, administrative
5 principles of the contracting business and the rules adopted by the registrar
6 of contractors pursuant to this chapter, demonstrate knowledge and
7 understanding of construction plans and specifications applicable to the
8 particular industry or craft and of the standards of construction work and
9 techniques and practices in the particular industry or craft and demonstrate
10 a general understanding of other related construction trades, in addition to
11 any other matters as may be deemed appropriate by the registrar to determine
12 that the qualifying party meets the requirements of this chapter. The
13 registrar shall maintain multiple versions of examinations for each type of
14 license that requires an examination.

15 G. No license shall be issued to a minor, to any partnership in which
16 one of the partners is a minor or to any corporation in which a corporate
17 officer is a minor.

18 H. Before receiving, renewing and holding a license pursuant to this
19 chapter, the registrar may require a license applicant or licensee to submit
20 to the registrar a full set of fingerprints and the fees required in section
21 41-1750. The registrar shall submit the fingerprints and fees to the
22 department of public safety for the purpose of obtaining a state and federal
23 criminal records check pursuant to section 41-1750 and Public Law
24 92-544. The department of public safety may exchange this fingerprint data
25 with the federal bureau of investigation.

26 Sec. 5. Section 32-1132, Arizona Revised Statutes, is amended to read:
27 32-1132. Residential contractors' recovery fund

28 A. The residential contractors' recovery fund is established, to be
29 administered by the registrar, from which any person injured by an act,
30 representation, transaction or conduct of a residential contractor licensed
31 pursuant to this chapter that is in violation of this chapter or the rules
32 adopted pursuant to this chapter may be awarded in the county where the
33 violation occurred an amount of not more than thirty thousand dollars for
34 damages sustained by the act, representation, transaction or conduct. An
35 award from the fund is limited to the actual damages suffered by the claimant
36 as a direct result of the contractor's violation but shall not exceed an
37 amount necessary to complete or repair a residential structure or
38 appurtenance within residential property lines. Actual damages shall not be
39 established by bids supplied by or the value of work performed by a person or
40 entity that is not licensed pursuant to this chapter and that is required to
41 be licensed pursuant to this chapter. If the claimant has paid a deposit or
42 down payment and no actual work is performed or materials are delivered, the
43 award of actual damages shall not exceed the exact dollar amount of the
44 deposit or down payment plus interest at the rate of ten per cent a year from
45 the date the deposit or down payment is made or not more than thirty thousand

dollars, whichever is less. Interest shall not be paid from the fund on any other awards under this chapter unless ordered by a court of competent jurisdiction. An award from the fund shall not be available to persons injured by an act, representation, transaction or conduct of a residential contractor who was not licensed pursuant to this chapter or whose license was in an inactive status, expired, cancelled, revoked, suspended or not issued at the time of the contract. No more than the maximum individual award from the fund shall be made on any individual residence or to any injured person. Notwithstanding any other provision of law, monies in the residential contractors' recovery fund shall not be directly awarded for attorney fees or costs except in contested cases appealed to the superior court.

B. ANY PERSON RECEIVING AN AWARD FROM THE FUND UNDER THIS ARTICLE IS DEEMED TO HAVE ASSIGNED TO THE REGISTRAR THE PERSON'S RIGHTS FOR RECOVERY AGAINST THE RESPONSIBLE RESIDENTIAL CONTRACTOR LICENSED PURSUANT TO THIS CHAPTER TO THE EXTENT OF THE PERSON'S AWARD FROM THE FUND.

~~B.~~ C. Except as provided in section 32-1152, subsection C, every person making application for a contractor's license or for renewal of a contractor's license to engage in residential contracting shall pay an assessment of not more than six hundred dollars during the biennial license period for deposit in the fund. In the event that the registrar does not issue the license, this assessment shall be returned to the applicant.

Sec. 6. Section 32-1152, Arizona Revised Statutes, is amended to read:

~~32-1152.~~ Bonds

A. Before granting an original contractor's license, the registrar shall require of the applicant a surety bond in a form acceptable to the registrar or a cash deposit as provided in this section. AT THE TIME OF FILING AN ORIGINAL APPLICATION, THE APPLICANT SHALL PROVIDE TO THE REGISTRAR AN ESTIMATE OF THE APPLICANT'S VOLUME OF WORK FOR EACH OF THE TWO ENSUING TWELVE MONTH PERIODS AND THE BASIS ON WHICH THE ESTIMATE WAS DETERMINED. No contractor's license may be renewed unless the applicant's surety bond or cash deposit is in full force and effect. AT THE TIME OF FILING A RENEWAL APPLICATION, THE APPLICANT SHALL PROVIDE TO THE REGISTRAR AN ESTIMATE OF THE APPLICANT'S VOLUME OF WORK FOR EACH OF THE TWO ENSUING TWELVE MONTH PERIODS, NEITHER OF WHICH SHALL BE LESS THAN THE AVERAGE OF THE APPLICANT'S ACTUAL VOLUME OF WORK FOR THE PRECEDING TWO TWELVE MONTH PERIODS UNLESS THE APPLICANT ALSO FILES AN EXPLANATION ACCEPTABLE TO THE REGISTRAR FOR THE LESSER AMOUNTS. AN ESTIMATE OF AN APPLICANT'S VOLUME OF WORK IS NOT REQUIRED IF THE MAXIMUM BOND AMOUNT THAT IS SET BY RULE ADOPTED BY THE REGISTRAR IS PROVIDED AT THE TIME OF ORIGINAL LICENSE APPLICATION OR RENEWAL.

B. The bonds, or the cash deposit as provided in this section, shall be in the name of the licensee in amounts fixed by the registrar with the following schedules after giving due consideration to the ESTIMATES OF THE volume of work AS PRESCRIBED IN SUBSECTION A and the classification contemplated by the applicant:

1 1. General commercial building contractors and subclassifications of
2 general commercial contractors shall furnish a surety bond or cash deposit in
3 an amount ~~which~~ THAT shall be determined as follows:

4 (a) If the estimated annual volume of construction work of the
5 applicant is ten million dollars or more, the applicant shall furnish a
6 surety bond or cash deposit of not less than fifty thousand dollars or more
7 than ~~one~~ TWO hundred thousand dollars.

8 (b) If the estimated annual volume of construction work of the
9 applicant is more than five million dollars and less than ten million
10 dollars, the applicant shall furnish a surety bond or cash deposit of not
11 less than thirty-five thousand dollars or more than ~~seventy-five~~ ONE HUNDRED
12 FIFTY thousand dollars.

13 (c) If the estimated annual volume of construction work of the
14 applicant is more than one million dollars and less than five million
15 dollars, the applicant shall furnish a surety bond or cash deposit of not
16 less than fifteen thousand dollars or more than ~~fifty~~ ONE HUNDRED thousand
17 dollars.

18 (d) If the estimated annual volume of construction work of the
19 applicant is more than five hundred thousand dollars and less than one
20 million dollars, the applicant shall furnish a surety bond or cash deposit of
21 not less than ten thousand dollars or more than ~~twenty-five~~ FIFTY thousand
22 dollars.

23 (e) If the estimated annual volume of construction work of the
24 applicant is more than one hundred fifty thousand dollars and less than five
25 hundred thousand dollars, the applicant shall furnish a surety bond or cash
26 deposit of not less than five thousand dollars or more than ~~fifteen~~ THIRTY
27 thousand dollars.

28 (f) If the estimated annual volume of construction work of the
29 applicant is less than one hundred fifty thousand dollars, the applicant
30 shall furnish a surety bond or cash deposit of ~~five~~ TEN thousand dollars.

31 2. Specialty commercial contractors shall furnish a surety bond or
32 cash deposit in an amount ~~which~~ THAT shall be determined as follows:

33 (a) If the estimated annual volume of construction work of the
34 applicant is ten million dollars or more, the applicant shall furnish a
35 surety bond or cash deposit of not less than thirty-seven thousand five
36 hundred dollars or more than ~~fifty~~ ONE HUNDRED thousand dollars.

37 (b) If the estimated annual volume of construction work of the
38 applicant is more than five million dollars and less than ten million
39 dollars, the applicant shall furnish a surety bond or cash deposit of not
40 less than seventeen thousand five hundred dollars or more than ~~thirty-seven~~
41 SEVENTY-FIVE thousand ~~five hundred~~ dollars.

42 (c) If the estimated annual volume of construction work of the
43 applicant is more than one million dollars and less than five million
44 dollars, the applicant shall furnish a surety bond or cash deposit of not

1 less than seven thousand five hundred dollars or more than ~~twenty-five~~ FIFTY
2 thousand dollars.

3 (d) If the estimated annual volume of construction work of the
4 applicant is more than five hundred thousand dollars and less than one
5 million dollars, the applicant shall furnish a surety bond or cash deposit of
6 not less than five thousand dollars or more than ~~seventeen~~ THIRTY-FIVE
7 thousand ~~five-hundred~~ dollars.

8 (e) If the estimated annual volume of construction work of the
9 applicant is more than one hundred fifty thousand dollars and less than five
10 hundred thousand dollars, the applicant shall furnish a surety bond or cash
11 deposit of not less than two thousand five hundred dollars or more than ~~seven~~
12 FIFTEEN thousand ~~five-hundred~~ dollars.

13 (f) If the estimated annual volume of construction work of the
14 applicant is less than one hundred fifty thousand dollars, the applicant
15 shall furnish a surety bond or cash deposit of ~~two~~ FIVE thousand ~~five-hundred~~
16 dollars.

17 3. The total amount of the surety bond or cash deposit required of a
18 licensee who holds more than one license under paragraphs 1 and 2 of this
19 subsection shall be the sum of the surety bond or cash deposit required for
20 each license based on the estimated annual volume of construction work of the
21 applicant allocated to and performed under each license. The applicant at
22 ~~his~~ THE APPLICANT'S option may post a single surety bond or cash deposit,
23 which shall be the sum of the bonds or deposits determined under this
24 subsection for all such licenses.

25 4. General dual licensed contractors and subclassifications of general
26 dual licensed contractors shall furnish a single surety bond or cash
27 deposit with amounts for each classification of license that are determined
28 based on the volume of commercial work as determined under paragraph 1 of
29 this subsection and the volume of residential work as determined under
30 paragraph 5 of this subsection. Liability under the bond or cash deposit
31 shall be limited to the amount established for each commercial or residential
32 license and is subject to the limitations and requirements set forth in
33 subsection E of this section.

34 5. General residential contractors and subclassifications of general
35 residential contractors shall furnish a surety bond or cash deposit in an
36 amount of not more than ~~fifteen~~ THIRTY thousand dollars and not less than
37 five thousand dollars.

38 6. Specialty dual licensed contractors shall furnish a single surety
39 bond or cash deposit with amounts for each classification of license that are
40 determined based on the volume of commercial work as determined under
41 paragraph 2 of this subsection and the volume of residential work as
42 determined under paragraph 7 of this subsection. Liability under the bond or
43 cash deposit shall be limited to the amount established for each commercial
44 or residential license and is subject to the limitations and requirements set
45 forth in subsection E of this section.

1 7. Specialty residential contractors shall furnish a surety bond or
2 cash deposit in an amount of not more than ~~seven~~ FIFTEEN thousand ~~five~~
3 ~~hundred~~ dollars and not less than one thousand dollars.

4 8. Dual licensed swimming pool contractors and residential swimming
5 pool general contractors shall furnish a surety bond or cash deposit in the
6 same amounts based on the volume of work as determined under paragraph 1 of
7 this subsection for a general commercial contractor.

8 C. Dual licensed contractors and residential contractors shall also
9 either:

10 1. Furnish an additional surety bond or cash deposit in the amount of
11 two hundred thousand dollars solely for actual damages suffered by persons
12 injured as described in section 32-1131. This bond shall be subject to the
13 limitations on the amounts that may be awarded to individual claimants as
14 established in section 32-1132.

15 2. Participate in the residential contractors' recovery fund and pay
16 the assessment prescribed by section 32-1132.

17 D. The surety bonds shall be executed by the contractor as principal
18 with a corporation duly authorized to transact surety business in this
19 state. Evidence of a surety bond shall be submitted to the registrar in a
20 form acceptable to the registrar. The contractor may in the alternative
21 establish a cash deposit in the amount of the bond with the state treasurer
22 in accordance with rules adopted by the registrar. Such cash bond monies
23 shall be deposited, pursuant to sections 35-146 and 35-147, in the
24 contractors' cash bond fund. The state treasurer shall invest and divest
25 monies in the fund as provided by section 35-313, and monies earned from
26 investment shall be credited to the state general fund. Such cash deposits
27 may be withdrawn, if there are no outstanding claims against them, two years
28 after the termination of the license in connection with which the cash is
29 deposited. The cash deposit may be withdrawn two years after the filing of a
30 commercial surety bond as a replacement to the cash deposit.

31 E. The bonds or deposit required by subsection B of this section shall
32 be for the benefit of and shall be subject to claims by the registrar of
33 contractors for failure to pay any sum required pursuant to this
34 chapter. The bond or deposit required by subsection B, paragraphs 1, 2 and 3
35 of this section is for the benefit of and subject to claims by a licensee
36 under this chapter or a lessee, owner or co-owner of nonresidential real
37 property including, but not limited to, a tenant in common or joint tenant,
38 or their successors in interest, who has a direct contract with the licensee
39 against whose bond or deposit the claim is made and who is damaged by the
40 failure of the licensee to build or improve a structure or appurtenance on
41 that real property at the time the work was performed in a manner not in
42 compliance with the requirements of any building or construction code
43 applicable to the construction work under the laws of this state or any
44 political subdivision, or if no such code was applicable, in accordance with
45 the standards of construction work approved by the registrar. The

1 residential bond or deposit required by subsection B, paragraphs 4 through 8
2 of this section is for the benefit of and subject to claims by any person
3 furnishing labor, materials or construction equipment on a rental basis used
4 in the direct performance of a construction contract involving a residential
5 structure or by persons injured as defined in section 32-1131. The bond or
6 deposit required by subsection C, paragraph 1 of this section is for the
7 benefit of and is subject to claims only by persons injured as described in
8 section 32-1131. The person seeking recovery from the bond or cash deposit
9 shall maintain an action at law against the contractor if claiming against
10 the cash deposit or against the contractor and surety if claiming against the
11 surety bond. If the person seeking recovery is required to give the notice
12 pursuant to section 33-992.01, ~~he~~ THE PERSON is entitled to seek recovery
13 only if ~~he~~ THE PERSON has given such notice and has made proof of
14 service. The surety bond or cash deposit shall be subject to claims until
15 the full amount thereof is exhausted. The court may award reasonable
16 ~~attorney's~~ ATTORNEY fees in a judgment against a contractor's surety bond or
17 cash deposit. No suit may be commenced on the bond or for satisfaction from
18 the cash deposit after the expiration of two years following the commission
19 of the act or delivery of goods or rendering of services on which the suit is
20 based, except that time for purposes of claims for fraud shall be measured as
21 provided in section 12-543. The surety bond or cash deposit shall be
22 continuous in form and shall be conditioned so that the total aggregate
23 liability of the surety or cash deposit for all claims, including reasonable
24 ~~attorney's~~ ATTORNEY fees, shall be limited to the face amount of the surety
25 bond or cash deposit irrespective of the number of years the bond or cash
26 deposit is in force. If the corporate surety desires to make payment without
27 awaiting court action, the amount of any bond filed in compliance with this
28 chapter shall be reduced to the extent of any payment or payments made by the
29 corporate surety in good faith thereunder. Any such payments shall be based
30 on priority of written claims received by the corporate surety prior to court
31 action. If more than one cash deposit exists, the judgment against the
32 contractor shall state which cash deposit shall be used to satisfy the
33 judgment. A certified copy of the judgment shall then be filed with the
34 registrar, and such judgment shall specify that it may be satisfied from the
35 contractor's cash deposit. Priority for payment shall be based upon the time
36 of filing with the registrar. Upon receipt of a certified copy of the
37 judgment, the registrar may authorize payment from the cash deposit of the
38 amount claimed or of whatever lesser amount remains on file. In any action
39 against a cash deposit, the claimant, at the time of filing suit, may notify
40 the registrar in writing of the action against the cash deposit, but shall
41 not name as a defendant in the action the registrar, the treasurer, or the
42 state. Failure to so notify the registrar at the time of filing suit may
43 result in the cash deposit being withdrawn by the licensee ~~prior to~~ BEFORE
44 judgment pursuant to subsection D of this section.

1 F. When a corporate surety cancels a bond, the surety shall not less
2 than thirty days ~~prior to~~ BEFORE the effective date of the cancellation give
3 the principal and the registrar a written notice of the cancellation. Notice
4 to the principal shall be by certified mail in a sealed envelope with postage
5 fully prepaid. Proof of notice to the principal shall be made available to
6 the registrar on request. On reduction or depletion of the cash deposit, the
7 registrar shall immediately notify the licensee of ~~said~~ THE reduction or
8 depletion and that the licensee must replenish the cash deposit or furnish a
9 surety bond on or before thirty days from the date of ~~said~~ THE reduction or
10 depletion or the contractor's license shall be suspended on the thirtieth day
11 without further notice or hearing. Notice to the contractor shall be by
12 certified mail in a sealed envelope with postage fully prepaid ~~thereon~~,
13 addressed to the contractor's latest address of record in the registrar's
14 office. The contractor's license shall be suspended by operation of law on
15 the date the bond is canceled or thirty days from the date of reduction or
16 depletion of the cash deposit unless a replacement bond or cash deposit is on
17 file with the registrar.

18 G. The registrar and the state treasurer shall have no personal
19 liability for the performance of duties relating to the bonds, cash deposits,
20 certificates of deposit, investment certificates or share accounts required
21 or permitted by this chapter as long as such duties are performed in good
22 faith.

23 H. In the following instances the registrar, after a hearing, may
24 require, as a condition precedent to issuance, renewal, continuation or
25 removal of suspension of a license, a surety bond or cash deposit in an
26 amount and duration to be fixed by the registrar based upon the seriousness
27 of the violations, which shall be not more than ten times the amount required
28 by subsection B of this section:

29 1. When a license of either the applicant or the qualifying party has
30 been suspended or revoked or a surety bond or cash deposit requirement has
31 been increased under section 32-1154 previously as the result of disciplinary
32 action for a violation of this chapter.

33 2. When either the applicant or qualifying party was an officer,
34 member, partner or qualifying party for a licensee at any time during which
35 cause for disciplinary action occurred resulting in suspension or revocation
36 of such licensee's license and such applicant or qualifying party had
37 knowledge of or participated in the act or omission ~~which~~ THAT was the cause
38 of such disciplinary action for a violation of this chapter.

39 3. The bonds required by this subsection shall be in addition to any
40 other bond or cash deposit required by this chapter or any other bond
41 required of a contractor by an owner or any other contracting party on any
42 contract undertaken by ~~him~~ THE CONTRACTOR pursuant to the authority of such
43 license.

44 Sec. 7. Section 32-1154, Arizona Revised Statutes, is amended to read:

32-1154. Grounds for suspension or revocation of license;
continuing jurisdiction; civil penalty; recovery
fund award

A. The holder of a license or any person listed on a license pursuant to this chapter shall not commit any of the following acts or omissions:

1. Abandonment of a contract or refusal to perform after submitting a bid on work without legal excuse for the abandonment or refusal.

2. Departure from or disregard of plans or specifications or any building codes of the state or any political subdivision of the state in any material respect ~~which~~ THAT is prejudicial to another without consent of the owner or the owner's duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications and code.

3. Violation of any rule adopted by the registrar.

4. Failure to comply with the statutes or rules governing social security, workers' compensation or unemployment insurance.

5. Failure to pay income taxes, withholding taxes or any tax imposed by title 42, chapter 5, articles 1 and 4 and incurred in the operation of the licensed business.

6. Misrepresentation of a material fact by the applicant in obtaining a license.

7. The doing of a wrongful or fraudulent act by the licensee as a contractor resulting in another person being substantially injured.

8. Conviction of a felony.

9. Failure in a material respect by the licensee to complete a construction project or operation for the price stated in the contract, or in any modification of the contract.

10. Aiding or abetting a licensed or unlicensed person to evade this chapter, knowingly or recklessly combining or conspiring with a licensed or unlicensed person, allowing one's license to be used by a licensed or unlicensed person or acting as agent, partner, associate or otherwise of a licensed or unlicensed person with intent to evade this chapter.

11. Failure by a licensee or agent or official of a licensee to pay monies in excess of seven hundred fifty dollars when due for materials or services rendered in connection with the licensee's operations as a contractor when the licensee has the capacity to pay or, if the licensee lacks the capacity to pay, when the licensee has received sufficient monies as payment for the particular construction work project or operation for which the services or materials were rendered or purchased.

12. Failure of a contractor to comply with any safety or labor laws or codes of the federal government, state or political subdivisions of the state.

13. Failure in any material respect to comply with this chapter.

1 14. Knowingly entering into a contract with a contractor for work to be
2 performed for which a license is required with a person not duly licensed in
3 the required classification.

4 15. Acting in the capacity of a contractor under any license issued
5 under this chapter in a name other than as set forth upon the license.

6 16. False, misleading or deceptive advertising whereby any member of
7 the public may be misled and injured.

8 17. Knowingly contracting beyond the scope of the license or licenses
9 of the licensee.

10 18. Contracting or offering to contract or submitting a bid while the
11 license is under suspension or while the license is on inactive status.

12 19. Failure to notify the registrar in writing within a period of
13 fifteen days of any disassociation of the person who qualified for the
14 license. Such licensee shall have sixty days from the date of such
15 disassociation to qualify through another person.

16 20. Subsequent discovery of facts which if known at the time of
17 issuance of a license or the renewal of a license would have been grounds to
18 deny the issuance or renewal of a license.

19 21. Having a person named on the license who is named on any other
20 license in this state or in another state which is under suspension or
21 revocation unless the prior revocation was based solely on a violation of
22 this paragraph.

23 22. Continuing a new single family residential construction project
24 with actual knowledge that a pretreatment wood-destroying pests or organisms
25 application was either:

26 (a) Not performed at the required location.

27 (b) Performed in a manner inconsistent with label requirements, state
28 law or rules.

29 23. Failure to take appropriate corrective action to comply with this
30 chapter or with rules adopted pursuant to this chapter without valid
31 justification within a reasonable period of time after receiving a written
32 directive from the registrar. The written directive shall set forth the time
33 within which the contractor is to complete the remedial action. The time
34 permitted for compliance shall not be less than fifteen days from the date of
35 issuance of the directive. A license shall not be revoked or suspended nor
36 shall any other penalty be imposed for a violation of this paragraph until
37 after a hearing has been held.

38 24. Prohibit, threaten to prohibit, retaliate, threaten to retaliate or
39 otherwise intimidate any contractor or materialman from serving a preliminary
40 notice pursuant to section 33-992.01.

41 B. The registrar may on the registrar's own motion, and shall on the
42 written complaint of any person, investigate the acts of any contractor
43 within this state and may temporarily suspend, with or without imposition of
44 specific conditions in addition to increased surety bond or cash deposit
45 requirements, or permanently revoke any or all licenses issued under this

chapter if the holder of the license issued pursuant to this chapter is guilty of or commits any of the acts or omissions set forth in subsection A of this section.

C. The expiration, cancellation, suspension or revocation of a license by operation of law or by decision and order of the registrar or a court of law or the voluntary surrender of a license by a licensee shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such a license, or denying the renewal or right of renewal of such license.

D. The registrar may impose a civil penalty of not to exceed five hundred dollars on a contractor for each violation of subsection A, paragraph 23 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic revocation of the license thirty days after the effective date of the order providing for the civil penalty. No future license may be issued to an entity consisting of a person associated with the contractor, as defined in section 32-1101, subsection A, paragraph ~~5- 6~~, unless payment of any outstanding civil penalty is tendered.

E. The registrar shall impose a civil penalty of not to exceed one thousand dollars on a contractor for each violation of subsection A, paragraph 18 of this section. Civil penalties collected pursuant to this subsection shall be deposited in the residential contractors' recovery fund. The failure by the licensee to pay any civil penalty imposed under this subsection results in the automatic permanent revocation of the license thirty days after the effective date of the order providing for the civil penalty. No future license may be issued to an entity consisting of a person associated with the contractor, as defined in section 32-1101, subsection A, paragraph ~~5- 6~~, unless payment of any outstanding civil penalty is tendered.

F. ~~Notwithstanding any other provisions in this chapter,~~ If a RESIDENTIAL contractor's license has been revoked, ~~or has been~~ suspended OR PLACED ON DISCIPLINARY PROBATION as a result of ~~an order to remedy~~ a violation of this chapter, ~~and the contractor refuses or is unable to comply with the order of the registrar to remedy the violation,~~ the registrar may order payment WITHIN THE LIMITATIONS PRESCRIBED IN ARTICLE 2.1 OF THIS CHAPTER from the residential contractors' recovery fund to ~~remedy the~~ COMPENSATE AN ELIGIBLE CLAIMANT FOR ACTUAL DAMAGES CAUSED BY A RESIDENTIAL CONTRACTOR'S violation. The registrar shall serve the contractor with a notice setting forth the amount claimed or to be awarded. If the contractor contests the amount or propriety of the payment, the contractor shall respond within ten days of the date of service by requesting a hearing to determine the amount or propriety of the payment. Failure by the contractor to respond in writing within ten days of the date of service shall be deemed a waiver by the contractor of the right to contest the amount claimed or to be

1 awarded. Service may be made by personal service to the contractor or by
2 mailing a copy of the notice by registered OR CERTIFIED mail with postage
3 prepaid to the contractor's latest address of record on file in the
4 registrar's office. If service is made by registered OR CERTIFIED mail, it
5 is effective five days after the notice is mailed. Except as provided in
6 section 41-1092.08, subsection H, the contractor or injured person may seek
7 judicial review of the registrar's final award pursuant to title 12, chapter
8 7, article 6.

9 Sec. 8. Section 32-1165, Arizona Revised Statutes, is amended to read:

10 32-1165. Advertising; effect of; classification

11 Except as authorized by section 32-1121, subsection A, paragraph ~~14~~ 13,
12 subdivision (c), it is a class 1 misdemeanor for any person to advertise that
13 ~~he~~ THE PERSON is able to perform any service or contract for compensation
14 subject to regulation by the registrar under the terms of this chapter unless
15 a license under the terms of this chapter is first obtained regardless of
16 whether ~~his~~ THE PERSON'S operations as a contractor are otherwise exempt.